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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/491,747	01/27/2000	Brad S. Konia	9403-0F255US0	9009

7590 01/16/2003

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EXAMINER

KARMIS, STEFANOS

ART UNIT

PAPER NUMBER

3624

DATE MAILED: 01/16/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

09/491,747

Applicant(s)

KONIA, BRAD S.

Examiner

Stefano Karmis

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— The MAILING DATE of this communication appears on the cover sheet with the correspondence address —

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 16 December 2002.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-25 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-25 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

### Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

### Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413) Paper No(s) \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

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### **DETAILED ACTION**

1. This communication is in response to Applicant's amendment filed on December 16, 2002. The rejections are as stated below.

#### ***Status of Claims***

2. Of the original claims 1-25, claims 1-25 are under prosecution in this application.

#### ***Summary of this Office Action***

3. Applicants' arguments filed on December 16, 2002 have been fully considered, and discussed in the next section below or within the following rejection are not deemed to be persuasive. Therefore, claims 1-25 are rejected as being unpatentable over the art cited below, and Applicants' request for allowance is respectfully denied.

#### ***Response to Applicants' Amendment***

4. The Examiner acknowledges Applicants' arguments in the remarks with respect to the 35 U.S.C. 112, first paragraph to claims 11-13, 21, and 22, and therefore withdraws the previous office action's claim rejection under 35 U.S.C. 112 1<sup>st</sup> paragraph. Applicants' remaining traversals are discussed under 35 U.S.C. §103 rejections.

#### ***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

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(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. The factual inquiries set forth in *Graham v. John Deere Co.*, 148 USPQ 459, that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or unobviousness.

7. Claims 1-8 and 11-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Davis et al. U.S. Patent No. 6,269,361 as discussed on pages 3-5 of paper number 8.

8. Claims 9-10 and 21-22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Davis et al. U.S. Patent No. 6,269,361 in view of Brett et al. U.S. Patent No. 6,023,685 as discussed on page 5 of paper number 8.

9. Claim 23 is rejected under 35 U.S.C. 103(a) as being unpatentable over Alaia et al. U.S. Patent No. 6,216,114 as discussed on pages 3-4 of paper number 8.

10. Claims 1, 11, and 23, Davis teaches system and method to enable a web site promoter to select a search term and influence a position within the search result list generated by that search term by participating in an online competitive bidding process

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(column 4-5, lines 66-2). Alaia teaches a supplier-bidding auction where bid prices start high and move downward in reverse-auction format as bidders interact to establish a closing price (column 2, lines 28-30).

Both Davis and Alaia fail to teach incrementing and decrementing of bids being performed automatically.

Official notice is taken that implementing a process that is done manually on a computer system is old and well known in the art.

Both Davis and Alaia use computer systems to receive and manage bidding in the auction process.

It would have been obvious to one of ordinary skilled in the art at the time the applicant's invention was made to modify the teachings of Davis and Alaia to include the use of a computer system in automatically incrementing and decrementing bids, and the steps of using the computer system to process the actual automatic ranking of bids and bid placement.

### ***Response to Arguments***

11. Applicant's arguments with respect to the claims have been considered but are moot in view of the new ground(s) of rejection.

### ***Conclusion***

12. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

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A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

13. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Stefano Karmis whose telephone number is (703) 305-8130. The examiner can normally be reached Monday-Friday from 8:30 AM to 5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Vincent Millin can be reached at (703) 308-1065.

The fax number for Formal or Official faxes and Draft or Informal faxes to Technology Center 3600 or this Art Unit is (703) 305-7687 or 7658.

Any inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist whose telephone number is (703) 308-1113.

Respectfully Submitted,

Stefano Karmis

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January 7, 2003

  
**HANI M. KAZIMI**  
**PRIMARY EXAMINER**